
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

A. Bates Butler, as Trustee
of Construction Materials Co.,
Appellant,

vs.

City of Tucson, et. al.,
Appellees.

The Bank of Tucson,
Appellant,

vs.

Pacific National Insurance Company,
City of Tucson, Martin Construction
Company and A. Bates Butler,
Appellees

No. 20390

Martin Construction Co. and
Pacific National Insurance Co.,
Appellants

vs.

Bank of Tucson, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

BRIEF FOR APPELLEE CITY OF TUCSON

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JURISDICTIONAL STATEMENT

Appellee City concurs with Appellant
Trustees jurisdictional statement.

INTRODUCTION

For the purposes of this brief, the parties will be designated as they are in Appellant A. Bates Butler's brief, that is, A. BATES BUTLER, Trustee in Bankruptcy of Construction Materials Company, Bankrupt, Appellant, shall hereinafter be referred to as "Trustee". CONSTRUCTION MATERIALS COMPANY, bankrupt, will hereinafter be referred to as "Bankrupt". The CITY OF TUCSON, Appellee, will hereinafter be referred to as "City". THE BANK OF TUCSON, Appellee, shall hereinafter be referred to as "Bank", and MARTIN CONSTRUCTION COMPANY, Appellee, shall hereinafter be referred to as "Martin".

STATEMENT OF THE CASE

Since Appellant has apparently abandoned any designated grounds of appeal which would bear directly upon the City of Tucson, the City will concern itself only as a nominal party to the appeal, and make an effort towards brevity.

FACTS OF THE CASE

The facts as set forth by the Appellee and the Bank are properly stated and the City would therefore respectfully ask leave of the Court to adopt those facts. The City would also like to clarify the point as to the bonds in issue being placed in the registry of the Court. As shown by City's Answer in the District Court, the City claimed no interest in the bonds in issue and re-

requested the Court to take jurisdiction of the bonds and to determine in the action to whom they should be delivered. Subsequently, these bonds were delivered to the Clerk of the Court and their disposition was adjudicated.

QUESTION PRESENTED

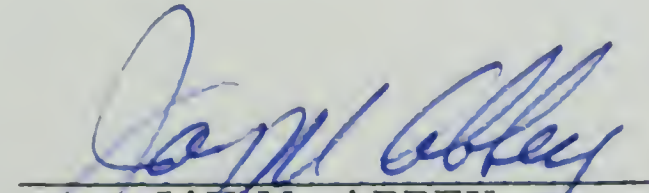
No question is presented by the City.

ARGUMENT

The City, not having opposed the position of any of the parties in the trial as to Count III of the Complaint, cannot now change position and argue as to the disposition of the bonds. The City feels that the ruling of the Court was the result of proper consideration of the law and facts in the matter.

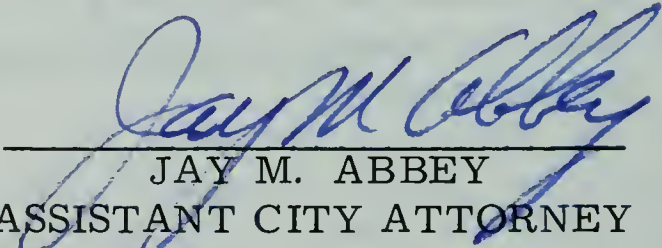
CONCLUSION

Because of its position, which is in the nature of interpleader, the City seeks only a final adjudication as to the disposition of the bonds in question.



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I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



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